

IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH

AT HYDERABAD

-

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

-

WP No. 4559 of 1995

Between :

Bh.Veerangaiah (Died)

LRs were brought on record as

Petitioners 2 to 4 .. Petitioners

And

Secretary,

Government of Andhra Pradesh,

Revenue (UCLL), Secretariat,

Hyderabad and another .. Respondents

DATED : 14th June, 2006

JUDGMENT :

The 1st petitioner who died during the pendency of the writ petition filed the writ petition with the prayer as follows :

“For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction, declaring RC B3, CC No.1896/76, dated

17.3.1994, issued by the 2nd respondent and published in the A.P. Gazette, dated 21.4.1994, as illegal and invalid, and pass such other order or orders as may be deemed fit in the circumstances of the case.”

The petitioners 2 to 4 are brought on record as LR's of the original petitioner by an order of this Court dated 26.8.2003 in WPMP No.20753 of 2003.

The petitioner filed a declaration under the Urban Land Ceiling and Regulation Act, 1976 in CC No.1896 of 1976 before the 2nd respondent. On the date of the declaration under Section 6(1) of the Act, his family consisted of himself, his wife, three minor sons and an unmarried daughter, apart from a daughter who was already married. The 1st petitioner held various extents of land situated in Vidyadharapuram village of Vijayawada Taluq of Krishna District, the details are as follows :

N.T.S. No. 115 Vacant land Extent 449.77 Sq.m.

N.T.S. No. 125 Vacant land Extent 346.98 Sq.m.

N.T.S. No. 115 Vacant land Extent 271.73 Sq.m.

N.T.S. No. 4 Agricultural land 2317.67 Sq.m.

N.T.S. No. 19/1 Agricultural land 804.33 Sq.m.

Land with dwelling house Assessment No. 67.07 Sq.m.

-do- -do- 56.85 Sq.m.

It is stated in the affidavit filed in support of the writ petition that a draft statement contemplated under Section 8 of the Act was prepared on 27.6.1977 by the 2nd respondent indicating that the petitioner held an excess vacant land to the extent of 2815 Sq.m. The 1st petitioner filed his objections on 18.7.1977 under Section 8(3). In the said objections, it is specifically pleaded that two of the above mentioned items of property i.e., NTS No.4 and 19/1 to an extent of 2318 and 804 Sq.mts respectively cannot be treated as vacant lands under the act as they are agricultural lands. An order under Section 8(4) of the Act came to be passed on 20.9.1977

obviously ignoring the objection raised by the petitioner.

On 23.3.1978, the petitioner made an application to the respondent praying that the above mentioned two items of property be exempted from the purview of the Urban Land Ceiling Act on the ground that they are agricultural lands, an application, in my view is wholly misconceived, the reasons shall be recorded later.

On such an application, lot of unnecessary and useless correspondence took place between the parties, the details of which may not be necessary for the present purpose. Finally another order on 11.7.1979 came to be passed purporting to be one under Section 8(4) of the Act by the 2nd respondent by which the request of the petitioner to exclude the above mentioned two items of property from the purview of the Act was rejected. On 8.8.1979, a statement purporting to be one under Section 9 is prepared by the 2nd respondent wherein it was shown that the petitioner was holding land in excess of the ceiling limit to the tune of 2815 Sq.mts.

Once again the petitioner filed an affidavit before the 2nd respondent praying that the above mentioned two items of land be exempted. It is averred in the affidavit filed in support of the writ petition that on 15.6.1981 the 2nd respondent submitted a report to the 1st respondent that the above mentioned two pieces of land are agricultural lands registered as such in the revenue accounts and were being mainly used for agricultural purposes, the relevant averment in the affidavit reads as follows :

“..... the 2nd respondent has submitted a report to 1st respondent to the effect that N.T.S. Nos. 4 and 19/1 are agricultural lands. In his report, he submitted that these lands are registered as agricultural lands in Revenue accounts, mainly used for that purpose. He stated in his report that there was cultivation in N.T.S. 4 upto 1389 fasli. With regard to NTS No.19/1, he found that it is under cultivation even on 17.5.1991 when he visited the land....”

A final notification under Section 10(1) of the Act came to be published on 21.4.1994 in the Andhra Pradesh Gazette wherein it was shown that the 1st petitioner held lands in excess of the ceiling limit under the Act to the extent of 3088.45 Sq.mts and hence the present writ petition.

The 2nd respondent filed a counter. The basic facts are not in dispute. Insofar as the claim of the petitioner for exempting the two parcels of land referred to earlier it is stated in the counter affidavit as follows :

“It is submitted that after considering the statement and objections filed by the original declarant the then Special Officer and Competent Authority has passed orders under Section 8(4) of the Act on 11.04.1979 declaring the declarant as surplus land holder to an extent of 2815 square metres by rejecting the objections of the petitioner on the ground that the land in NTS No.4 and 19/1 of Vidyadharapuram village is situated within the Vijayawada Municipal limits and they are set apart for Non-Agricultural purpose in the Master Plan. (The copy of the same is filed herewith as Annexure No.5).”

Section 3 of the Urban Land Ceiling Act declares that no person shall be entitled to hold any vacant land in excess of the ceiling limit prescribed under the Act. The expression ‘vacant land’ is defined under Section 2(q) of the Act. It reads as follows :

“2. Definitions : (q) ‘Vacant land’ means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include –

- i. land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;
- ii. in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and
- iii. in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building :

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of livestock, on any land situated in a village within an urban

agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.”

It can be seen from the definition for the purpose of the Act, though a particular piece of land is a vacant land if it is used mainly for the purpose of agriculture though located in an “urban agglomeration” [once again a defined expression under Section 2(m) of the Act] , the same is not within the sweep of the definition “vacant land” and therefore a prohibition contained in Section 3 of the act does not apply to such land used mainly for the purpose of agriculture. By definition, lands though located within the urban agglomeration if they are used mainly for the purpose of agriculture are excluded from the purview of the operation of the Act, the question whether a particular piece of land is being used mainly for the purpose of agriculture on the date of the commencement of the Act is a question of fact to be decided after an appropriate enquiry. It does not appear from the counter that such an enquiry was conducted. The claim of the petitioner is rejected simply on the ground that the above mentioned two parcels of land are set apart for non-agricultural purposes in the Master Plan pertaining to Vijayawada Municipality (now a Corporation). The learned Government Pleader appearing for the respondent could not point out to any provision of the Act which makes such a consideration, a relevant consideration in deciding whether a particular piece of land is a vacant land as defined under the Act and attracting the prohibition contained under Section 3.

The expression ‘Master Plan’ is defined under section 2(h) of the Act which reads as follows :

“2. Definitions : (h) ‘*master plan*’, in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out;

The expression ‘master plan’ apart from the definition is to be found in the entire

enactment only in the definition of the expression 'urban land'. The expression 'urban land' itself is defined under Section 2(o) and it reads as follows :

“2. Definitions : (o) ‘urban land’ means, -

- i. any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or
- ii. in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.”

It can be seen from the definition of the expression 'urban land' for the purpose of the Act even if a particular piece of land satisfied the definition of the expression 'urban land' if such land is mainly used for the purpose of agriculture then the same is out of the purview of the expression 'urban land'. The only provision in the Act which employs the expression 'urban land' is Section 27² which deals with the prohibition of transfer of urban land. Therefore, the fact that a particular piece of land is included within the area encompassed in the Master Plan relevant for the urban agglomeration does not automatically make it a 'vacant land' as defined under the Act attracting the ceiling if the land is mainly used for the purpose of agriculture where a particular piece of land is urban land included in the Master Plan is only relevant for a limited purpose under the scheme of the Act to decide whether such a piece of land could be alienated. All that Section 27 says is such an alienation is permissible only with the previous permission in writing of the competent authority.

As already pointed out where a particular piece of land is mainly used for the purpose of agriculture or not is a question of fact to be decided by an appropriate enquiry under the act and such a question was never addressed by the

respondents though the petitioner repeatedly raised the objection with reference to two parcels of land mentioned above. Instead of addressing the question, the respondents kept on advising the petitioner to seek an exemption under Section 20 of the Act which procedure in my view is wholly misconceived. Section 20 empowers the State to exempt any piece of land which is otherwise subject to the operation of the Urban Land Ceiling Act. If a particular piece of land is *per se* beyond the purview of the Urban Land Ceiling Act as not being vacant land as defined under the Act, the question of whether the whole of such land seeking an exemption or the government granting an exemption does not arise and is not contemplated under the Act.

Therefore, I am of the opinion that the case of the petitioner was not in accordance with the provisions of the Statute, consequentially, the determination of excess land made by the respondents is illegal. The writ petition is therefore allowed as prayed for. The matter is remitted to the 2nd respondent for the determination of the case in accordance with law.

J.Chelameswar, J

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14th June 2006.